

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Stanley L. Schultz,)	
)	
Petitioner,)	ORDER ADOPTING
)	REPORT AND RECOMMENDATION
vs.)	
)	
Tim Schuetzle, Warden,)	
North Dakota State Penitentiary,)	
)	Case No. 1:05-cv-092
Respondent.)	


Before the Court is Petitioner Stanley Schultz’s Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody, filed on August 26, 2006. On October 31, 2005, Respondent Tim Schuetzle filed a Motion to Dismiss, and on December 23, 2005, Petitioner Schultz filed a Motion for Summary Judgment. Magistrate Judge Charles S. Miller, Jr. reviewed the pending motions, and, on March 16, 2006, submitted a Report and Recommendation. Judge Miller recommended that Schultz’s motion be denied, that Schuetzle’s motion be granted, and that Schultz’s petition be dismissed with prejudice. Schultz did not file an objection to the Report and Recommendation.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the record as a whole and finds that the Report and Recommendation is persuasive. The Court **ADOPTS** the Report and Recommendation (Docket No. 22). The Court **DENIES** Schultz’s motion for summary judgment (Docket No. 14), **GRANTS** Schuetzle’s Motion to Dismiss, and **DISMISSES** Schultz’s petition with prejudice. The Court certifies that any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis. The Court

further certifies that Schultz has failed to make a substantial showing of the denial of a constitutional right and will not grant a certificate of appealability.

IT IS SO ORDERED.

Dated this 11th day of April, 2006.



Daniel L. Hovland, Chief Judge
United States District Court